

CA(S) 717 27230156

OCT 13 1992

Recording Requested By:

East Bay Realty Services, Inc.
c/o Hercules Incorporated
Hercules Plaza
Wilmington, Delaware 19894

Recorded at request of **GRANTOR**
at _____ min. Past _____ m.
Contra Costa County Recorder
Stephen L. Weir, Recorder FEE: \$

7702

92 269449

When Recorded, Mail to:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Project Manager, Hercules Incorporated Site
Site Mitigation Branch

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY
HERCULES INCORPORATED SITE - WETLANDS AREA
HERCULES, CALIFORNIA

This Covenant and Agreement ("Covenant") is made on the
21st day of September, 1992 by East
Bay Realty Services, Inc., a wholly owned subsidiary of
Hercules Incorporated ("Covenantor"), who is the owner of
record of certain wetlands situated in Hercules, County of
Contra Costa, State of California, described in Exhibit A
attached hereto and incorporated herein by reference ("the
Wetlands") and by the California Department of Toxic
Substances Control. The Wetlands (approximately 2 acres),
the Legal Description of which is set forth in Exhibit A, is
a part of the 41-acre Hercules Incorporated site described
in Exhibit B attached hereto and incorporated herein by
reference ("the Site"). This Covenant is made with
reference to the following facts:

1 A. The Wetlands is a wetlands area (as defined in Article
2 II, Section 2.5 of this Covenant) and contains
3 hazardous substances.
4

5 B. Description of Facts
6

7 B.1 Contamination of the Wetlands. The Hercules
8 Incorporated Site has been vacant and abandoned since the
9 early 1960's when all buildings and structures were
10 demolished. From 1912 to the mid 1950's, various munitions
11 and explosives were manufactured and stored at the Site.
12 Housekeeping practices during this time entailed
13 periodically washing down small production buildings
14 (bunkers) and draining the washwater onto the surrounding
15 soils. By surface water runoff, soil contaminants drained
16 to the Site's Wetlands area from adjacent bunkers.
17 Subsurface soil at the Wetlands area was found to be
18 contaminated at a depth of 1 to 2 feet below the surface
19 with trinitrotoluene (TNT), dinitrotoluene (DNT), and
20 dinitrobenzene (DNB). TNT was detected in the Wetlands as
21 high as 9,600 parts per million (ppm); DNT was detected as
22 high as 13 ppm; and DNB was not detected at the analytical
23 detection limit of 0.25 ppm. These contaminants in the
24 upland areas were excavated to meet residential standards
25 and disposed offsite in March and April 1992. Limited
26 excavation in the Wetlands was also conducted in April 1992.
27

1 Approximately 250 cubic yards of contaminated soil was also
2 removed from the Wetlands area at a depth of 1.0-2.5 feet
3 below the surface. After soil removal, the Wetlands was
4 restored by backfilling with clean imported fill and
5 replacing the first foot of surface soil which was set aside
6 during excavation. An Operation and Maintenance Plan for
7 the Wetlands has been developed and will be implemented for
8 a minimum of three years for the restoration of the
9 Wetlands vegetation as required by the U.S. Army Corps of
10 Engineers.
11

12 B.2 General Description of Wetlands Remediation. The
13 remedial action for the Wetlands area of the Hercules
14 Incorporated Site is outlined in the final Amended Remedial
15 Action Plan (ARAP) dated January 1992. Section V.D of the
16 ARAP consists of conducting a limited excavation of the
17 Wetlands and restoration of the excavated areas. The
18 limited excavation was conducted in April 1992 to ensure
19 protection of human health and the environment by preventing
20 exposure to contaminated soils.
21

22 B.3 Exposure Pathway. If the Wetlands area were
23 disturbed or the contaminated soil were excavated and
24 brought to the surface, people conducting the excavation
25 and/or children playing in the Wetlands could be exposed to
26 the contaminated soils. Exposures can take place via
27 excavated soil contact resulting in inhalation, dermal

1 contact, or ingestion by humans or animals. The risk of
2 public exposure is lessened by distance from contaminants,
3 shortened length of time of exposure and mitigation measures
4 to control exposure. The limited excavation eliminated any
5 significant risks to human health and the environment.
6 Designating this area as a "wetlands" should further limit
7 access and attendant potential risks. A description of
8 potential human health effects of contaminants found on the
9 Wetlands is described in Appendix A.
10

11 B.4 Adjacent Land Uses and Population Potentially
12 Affected. The Hercules Incorporated Site is currently zoned
13 single family residential (R-1). Residential housing
14 currently borders the Site to the south and to the west.
15 The Hercules Properties, Inc. site and the Gelsar property
16 are located north of the Site and are combined into a single
17 City of Hercules Specific Plan which calls for a mix of
18 light industrial, commercial, mixed research and
19 development, historic, residential, waterfront park, and
20 waterfront commercial uses. The City of Hercules water
21 treatment plant is also located north of the Site. There
22 are no residential neighborhoods to the north and east
23 within one mile. The closest residential neighborhoods are
24 the Wildwood Development about 600 feet to the south across
25 San Pablo Avenue and the Santa Fe Railroad tracks, and
26 Hercules Village about 300 feet to the west. The Interstate
27

1 80/Highway 4 interchange is located northeast of the Site.
2

3 C. Covenantor desires and intends that in order to protect
4 the present or future public health and safety and the
5 environment, the Wetlands shall be used in such a
6 manner as to avoid potential harm to persons or
7 property which may result from hazardous substances and
8 wastes which have been left on unspecified portion(s)
9 of the Wetlands. This area is designated as a wetlands
10 area and shall be protected, preserved and dedicated
11 for the sole use as a wetlands habitat unless modified
12 in the future in accordance with Article IV.
13

14 ARTICLE I

15 1.1 Provisions to Run With the Land. This Covenant
16 sets forth protective provisions, covenants, restrictions,
17 and conditions; (collectively referred to as
18 "Restrictions"), upon and subject to which the Wetlands and
19 every portion thereof shall be improved, held, used,
20 occupied, leased, sold, hypothecated, encumbered, and/or
21 conveyed. Each and all of the Restrictions shall run with
22 the land, and pass with each and every portion of the
23 Wetlands, and shall apply to and bind the respective
24 successors in interest thereof. Each and all of the
25 Restrictions are imposed on the entire Wetlands unless
26 expressly stated as applicable to a specific portion of the
27

1 Wetlands. Each and all of the Restrictions are imposed
2 pursuant to Section 25355.5 and 25356.1 of Health and Safety
3 Code and run with the land pursuant to Section 25355.5.
4 Each and all of the Restrictions are enforceable by the
5 Department of Toxic Substances Control.
6
7

8 1.2 Concurrence of Owners Presumed. All purchasers,
9 lessees, or possessors of any portion of the Wetlands shall
10 be deemed by their purchase, leasing, or possession of such
11 Wetlands, to be in accord with the foregoing and to agree
12 for and among themselves, their heirs, successors, and
13 assignees, and the agents, employees, and lessees of such
14 owners, heirs, successors, and assignees, that the
15 Restrictions as herein established must be adhered to for
16 the benefit of future Owners and Occupants and that their
17 interest in the Wetlands shall be subject to the
18 Restrictions contained herein.
19

20 1.3 Incorporation Into Deeds and Leases. Covenantor
21 desires and covenants that the Restrictions set out herein
22 shall be incorporated by reference in each and all deeds and
23 leases of any portion of the Wetlands.
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ARTICLE II
DEFINITIONS

2.1 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, paved parking areas, regrading, excavation, and backfilling, constructed or placed upon any portion of the Wetlands.

2.3 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Wetlands.

2.4 Director. "Director" shall mean the Director of the California Department of Toxic Substances Control or his or her designee.

2.5 Wetlands. "Wetlands" shall mean the two (2) acre area at the Hercules Incorporated Site as delineated in Exhibit A. Pursuant to California Fish and Game Code, Division 3, Chapter 9, Section 2785(g), "wetlands" means lands which may be covered periodically or permanently with shallow water and which include saltwater marshes,

1 freshwater marshes, open or closed brackish water marshes,
2 swamps, mudflats, fens, and vernal pools.
3

4
5 ARTICLE III

6 DEVELOPMENT, USE, AND CONVEYANCE OF THE WETLANDS

7 3.1 Restrictions on Development and Use. Covenantor
8 promises to restrict the use of the Wetlands as described in
9 Exhibit A as follows:
10

- 11 a. No development of the Wetlands for commercial,
12 industrial, research and development, office,
13 warehouse, or any other business or occupational use
14 shall be permitted. Any disturbance shall not be
15 permitted on the Wetlands unless otherwise necessary to
16 mitigate the contaminants left on the Wetlands.
17
- 18 b. No agricultural use shall be permitted on the Wetlands.
19
- 20 c. No residence, hospitals, day-care centers, schools,
21 senior citizen centers, or other permanently occupied
22 human habitation shall be permitted on the Wetlands.
23
- 24 d. No disturbance of the soils/sediments and surface water
25 on the Wetlands shall be permitted. Such prohibited
26 activities on the Wetlands include: excavation,
27

1 grading, removal, trenching, filling, mining, or
2 drilling of gas, oil or water wells.
3

4
5 e. The Wetlands shall not be subdivided except as allowed
6 pursuant to Section 25232(a)(2) of the Health and
7 Safety Code.

8
9 f. The vegetation, surface water and habitat of the
10 Wetlands shall be preserved to the extent feasible as
11 set forth in the Department approved Operation and
12 Maintenance Plan dated August 1992. The use of the
13 Wetlands shall be dedicated solely to the Wetlands
14 habitat.

15
16 g. The Wetlands maintenance shall be carried out for three
17 years after excavation and restoration completion
18 pursuant to the approved Operations and Maintenance
19 Plan.

20
21 h. The Wetlands shall be secured against unauthorized
22 entry with a fence for a period of three years or until
23 the Wetlands damaged vegetation has been fully
24 restored.

25
26 i. All uses and development of the Wetlands shall be for
27 the preservation of the Wetlands area including

1 periodic inspection, maintenance and repair.

2
3 j. Covenantor promises to comply with the following
4 requirements:

5
6 The Owner shall notify the Department of each of the
7 following: 1) The type, cause, location and date of any
8 disturbance to the Wetlands area which could result to
9 bringing the hazardous substances buried on the
10 Wetlands to the surface; and 2) The type and date of
11 repair of such disturbance. Notification to the
12 Department and a request for any proposed repair by
13 earth movement or excavation shall be made by telephone
14 within 24 hours of the discovery of Wetlands
15 disturbance and by registered mail within five (5)
16 working days of both the discovery of Wetlands
17 disturbance and the completion of repairs.

18
19 k. The Department or its designated agents (including
20 successor agencies) shall have access to the Wetlands
21 for the purpose of inspection, surveillance, or
22 monitoring, or other purposes necessary to protect the
23 public health or safety and the environment as provided
24 in Chapters 6.5 and 6.8 of the Health and Safety Code
25 and Chapter 4 of Division 7 of the Water Code.
26
27

1 3.2 Conveyance of Wetlands. The Owner or Owners
2 shall provide a thirty (30) day advance notice to the
3 Department of any sale, lease, or other conveyance of the
4 Wetlands or an interest in the Wetlands to a third person.
5 The Department shall not, by reason of the Covenant, have
6 authority to approve, disapprove, or otherwise affect any
7 sale, lease, or other conveyance of the Wetlands except as
8 otherwise provided by law, by administrative order, or by
9 reason of this Covenant.
10

11 3.3 Enforcement. Failure of the Owner to comply with
12 any of the requirements, as set forth in paragraph 3.1 shall
13 be grounds for the Department, by reason of the Covenant, to
14 require that the Owner modify or remove any Improvements
15 constructed in violation of that paragraph. Violation of
16 the Covenant shall be grounds for the Department to file
17 civil and criminal actions against the Owner as provided by
18 law.
19

20 3.4 Notice in Agreements. All Owners and Occupants
21 shall execute a written instrument which shall accompany all
22 purchase, lease, sublease, or rental agreements relating to
23 the Wetlands. The instrument shall contain the following
24 statement:
25

26 "The land described herein contains hazardous
27 substances. Such condition renders the land and the

1 owner, lessee, or other possessor of the land subject
2 to requirements, restrictions, provisions, and
3 liabilities contained in Chapter 6.5 and Chapter 6.8 of
4 Division 20 of the Health and Safety Code. This
5 statement is not a declaration that a hazard exists."
6

7 ARTICLE IV

8 MODIFICATION AND TERMINATION

9 4.1 Modification. Any Owner or, with the Owner's
10 consent, any lessee of the Wetlands or any portion thereof
11 may apply to the Department for a written modification from
12 the provisions of this Covenant. Such application and the
13 decision/determination on that application shall be made in
14 accordance with Section 25233 of the Health and Safety Code.
15

16 4.2 Termination. Any Owner or, with the Owner's
17 consent, a lessee of the Wetlands or a portion thereof may
18 apply to the Department for a termination of the
19 Restrictions as they apply to all or any portion of the
20 Wetlands. Such application and the decision/determination
21 on that application shall be made in accordance with Section
22 25234 of the Health & Safety Code.
23

24 4.3 Term. Unless terminated in accordance with
25 paragraph 4.2 above, by law or otherwise, this Covenant
26 shall continue in effect in perpetuity.
27

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2 ARTICLE V
3 MISCELLANEOUS
4

5 5.1 No dedication intended. Nothing set forth herein
6 shall be construed to be a gift or dedication, or offer of a
7 gift or dedication, of the Wetlands or any portion thereof
8 to the general public or for any purposes other than for
9 usage as Wetlands habitat.

10 5.2 Notices. Whenever any person gives or serves any
11 notice, demand or other communication with respect to this
12 Covenant, each such notice, demand, or other communication
13 shall be in writing and shall be deemed effective 1) when
14 delivered, if personally delivered to the person being
15 served or to an officer of a corporate party being served or
16 official of a government agency being served, or 2) three
17 (3) business days after deposit in the mail if mailed by
18 United States mail, postage paid certified, return receipt
19 requested:

20 To: East Bay Realty Services, Inc.
21 c/o Hercules Incorporated
22 Hercules Plaza
23 Wilmington, Delaware 19894
Attn: Director, Corporate Real Estate

24 Copy to: Department of Toxic Substances Control
25 Region 2
26 700 Heinz Avenue, Suite 200
27 Berkeley, California 94710
Attention: Project Officer,
Hercules Incorporated Site
Site Mitigation Branch

1 Copy to: Department of Toxic Substances Control
2 Technical Services Branch
3 8950 Cal Center Drive, Bldg. 3 Suite 101
4 Sacramento, California 95826

5 5.3 Partial Invalidity. If any portion of the
6 Restriction set forth herein or terms is determined to be
7 invalid for any reason, the remaining portion shall remain
8 in full force and effect as if such portion had not been
9 included herein.

10
11 5.4 Article Heading. Headings at the beginning of
12 each numbered article of this Covenant are solely for the
13 convenience of the parties and are not a part of the
14 Covenant.

15
16 5.5 Recordation. This instrument shall be executed by
17 the Covenantor and the Director, California Department of
18 Toxic Substances Control. This instrument shall be recorded
19 by the Covenantor in the County of Contra Costa within
20 thirty (30) days of the date of execution.
21
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1 5.6 References. All references to Code sections
2 include successor provisions.
3

4 IN WITNESS WHEREOF, the parties execute this Covenant as of
5 the date set forth below.
6

7 OWNER

8 East Bay Realty Services Inc.,
9 a wholly owned subsidiary of
10 Hercules Incorporated

11 By: Saul Alan

12 Title: President

13 Date: 9/21/92

14 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

15 By: Barbara J. Cook

16 Barbara J. Cook, Chief
17 Site Mitigation Branch
18 Region 2

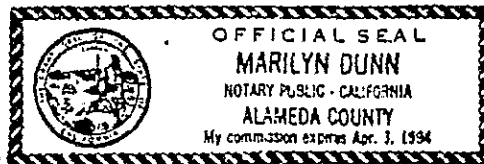
19 Date: 9-28-92
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1 STATE OF CALIFORNIA)

2)
3 COUNTY Alameda)
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5

6 On September 28 1992 before me, the undersigned, a Notary
7 Public in and for said state, personally appeared Barbara J.
8 Cook, personally known to me or proved to me on the basis of
9 satisfactory evidence to be the person who executed the
10 within instrument as Site Mitigation Branch Chief, Region 2,
11 of the Department of Toxic Substances Control, the Agency
12 that executed the within instrument, and acknowledged to me
13 that such Agency executed the same.
14

15 WITNESS my hand and official seal. >
16



20
21 Marilyn Dunn
22 Notary Public in and for said
23 County and State
24
25
26
27

1 STATE OF Delaware)

2)
3 COUNTY New Castle)
4)
5)
6)

7 On September 21, 1992 before me, the undersigned, a Notary
8 Public in and for said state, personally appeared

9 Gerard A. Cain, personally known to me or proved to me
10 on the basis of satisfactory evidence to be the person who
11 executed the within instrument as Covenantor of the
12 corporation that executed the within instrument, and
13 acknowledged to me that such corporation executed the same
14 pursuant to its bylaws or a resolution of its board of
15 directors.
16

17 WITNESS my hand and official seal.
18
19
20
21

22 Judith L. Valley
23 Notary Public in and for said
24 County and State
25

26 My Commission expires Jan. 22, 1993
27

APPENDIX A

CONTAMINANT HEALTH EFFECTS

Trinitrotoluene (TNT). TNT exposure hazard is by inhalation, ingestion and skin absorption. Exposure to TNT may cause irritation of the eyes, nose and throat. It may cause dermatitis and may stain skin, hair, and nails. There have been reported cases of fatalities of workers after several years of continuous exposure to TNT due to toxic hepatitis or aplastic anemia.

Dinitrotoluene (DNT). DNT exposure hazard is by inhalation, ingestion and skin absorption. DNT may produce anoxia due to the formation of methemoglobin. Repeated or prolonged exposure may cause anemia. Cyanosis may occur.

Legal Description

Hercules Incorporated Wetlands

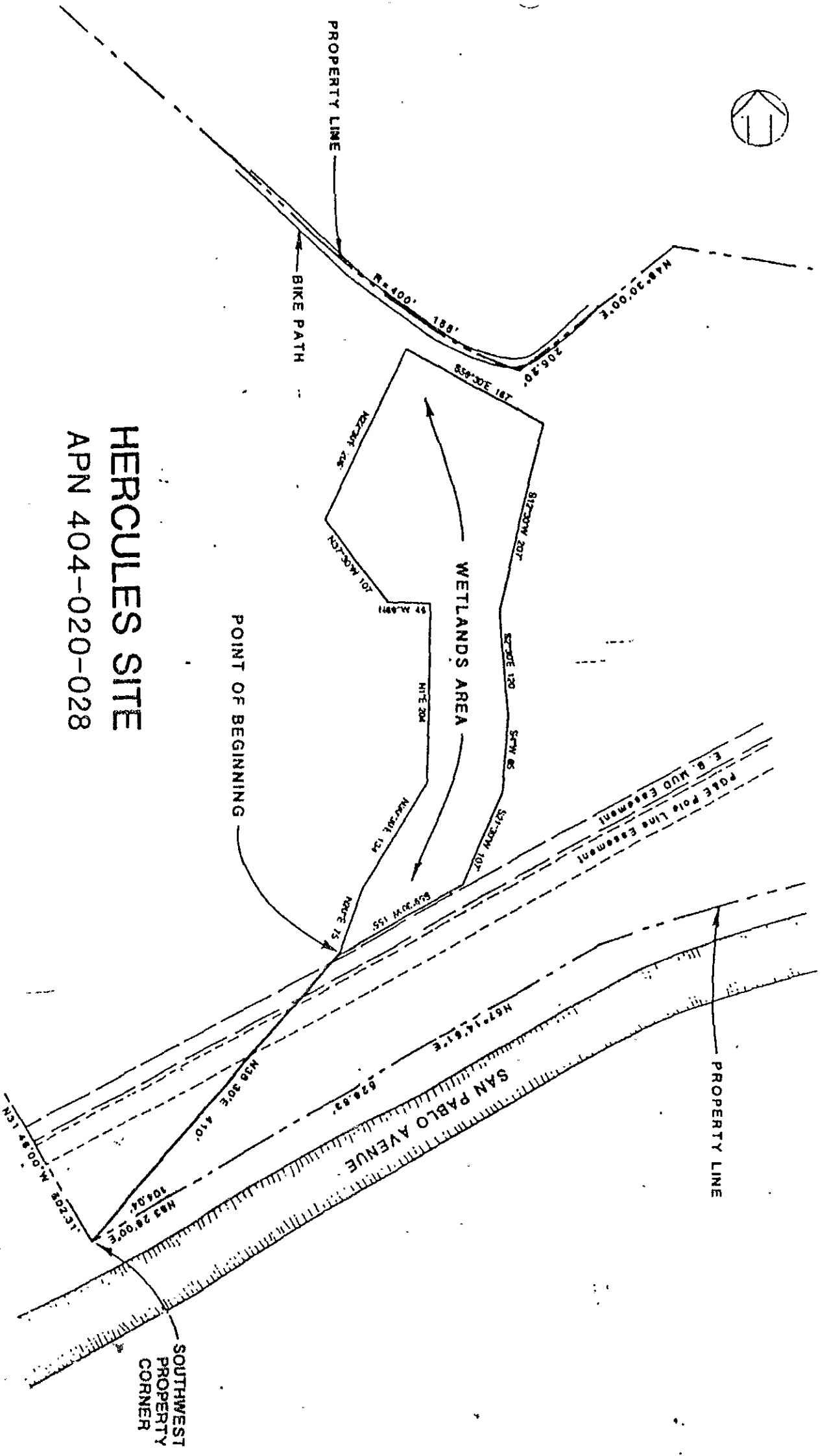
Hercules, CA

Beginning at a point located 410 feet on a bearing North $38^{\circ} 30'$ East of the southwest property corner of Lot 028 in Book 404 of maps on page 020, City of Hercules; thence, traversing North 20° East 75 feet; thence, North $30^{\circ} 30'$ East 134 feet; thence, North 1° East 204 feet; thence, North 89° West 45 feet; thence, North $37^{\circ} 30'$ West 107 feet; thence, North $22^{\circ} 30'$ East 205 feet; thence, South $59^{\circ} 30'$ East 167 feet; thence, South $12^{\circ} 30'$ West 207 feet; thence, South $2^{\circ} 30'$ East 120 feet; thence, South 4° West 85 feet; thence, South $21^{\circ} 30'$ West 107 feet; thence, South $59^{\circ} 30'$ West 155 feet to the point of beginning.

EXHIBIT A

WETLANDS AREA MAP

LEGAL DESCRIPTION OF THE WETLANDS AREA



HERCULES SITE
APN 404-020-028

SCALE 1" = 100'

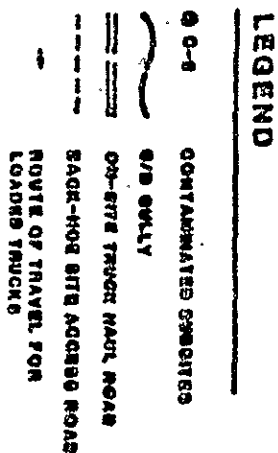
Questia Engineering Corporation Point Richmond, California	HERCULES WETLANDS DEED RESTRICTION AREA	Figure 1
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EXHIBIT B

HERCULES INCORPORATED SITE MAP

HERCULES INCORPORATED SITE LEGAL DESCRIPTION

ASSESSOR'S PARCEL MAP



**HERCULES SITE PLAN
AND LOCATION MAP**

SITE LEGAL DESCRIPTION

Real Property In the City of Hercules, County of Contra Costa, State of California, described as follows:

A portion of that 436.48 acre parcel of land as shown on sheet 5 of that certain Record of Survey Map filed August 15, 1974, in Book 57 of Licensed Surveyors Maps, at Pages 23 to 42, in the Office of the County Recorder of Contra Costa County, described as follows:

BEGINNING at a concrete monument in the northerly line of San Pablo Avenue at the easterly terminus of the course, as shown on sheet 5 of said Record of Survey Map, as N 88° 39' 30" W, 296.03 feet, thence from said point of BEGINNING, along the northerly line of San Pablo Avenue the following described courses and distances: N 88° 39' 30" W, 296.03 feet to a point; S 84° 00' 38" W, 422.28 feet to a point; S 74° 16' 10" W, 229.17 feet to a point of curvature with an arc length of 156.88 feet, a radius of 1,398.74 feet, through an angle of 6° 25' 34"; thence thereby S 57° 14' 51" W, 528.63 feet to a point; and S 53° 26' 00" W, 104.04 feet to a point;

Thence leaving said northerly line of San Pablo Avenue N 31° 45' 00" W, 502.31 feet to a point; thence N 58° 15' 00" E, 103.58 feet to a point; thence N 31° 45' 00" W, 900.00 feet to a point; thence N 58° 15' 00" E, 461.98 feet to a point of curvature with an arc length of 185.23 feet, a radius of 53.5 feet through an angle of 19° 50' 14"; thence thereby S 49° 04' 00" E, 537.60 feet to a point; thence along another arc length of 157.78 feet, a radius of 400 feet, through an angle of 22° 36'; thence thereby N 48° 50' 00" E, 205.20 feet to a point; thence S 83° 55' 00" E, 1,230.20 feet to a point; thence S 57° 25' 00" E, 423.30 feet to a point; thence S 47° 50' 00" E, 65.44 feet to a point on the northerly line of San Pablo Avenue; thence along another arc length of 65.68 feet, a radius of 949.57 feet; thence thereby continuing along the northerly line of San Pablo Avenue the following described courses and distances: S 72° 14' 02" W, 524.16 feet to a point; thence N 65° 34' 18" W, 26.34 feet to a point; thence N 87° 58' 33" W, 8.75 feet to a point; thence S 68° 22' 47" W, 31.30 feet to the point, and place of BEGINNING and containing 41.055 acres be the same more or less.

Bearings and distances herein conform with the California Coordinate System, Zone 3. Multiply distances by 1.000069 to obtain ground distances.

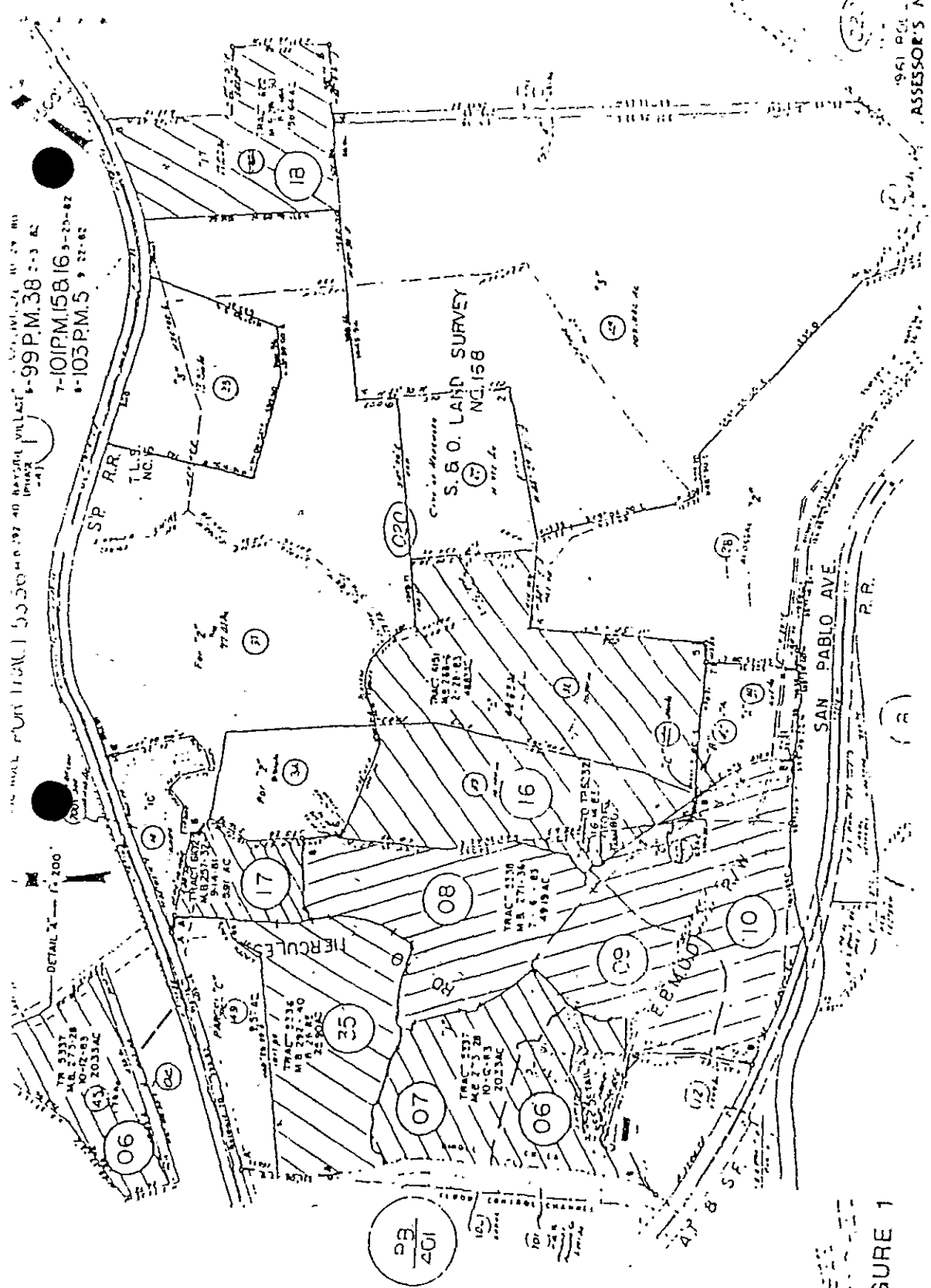


FIGURE 1

ASSESSOR'S M